

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

SANDRA SHEWRY, As Director, etc.,

Plaintiff and Respondent,

v.

ALBERT J. BEGIL,

Defendant and Appellant.

E035882

(Super.Ct.No. RCV068781)

ORDER MODIFYING OPINION,
NO CHANGE IN JUDGMENT

THE COURT:

It is ordered that the opinion filed herein on April 19, 2005, be modified as follows:

1. On page 4, the language in footnote 4 is deleted and the following language is inserted in its place:

California Code of Regulations, title 22, section 50961 provides: “(a) The Department shall claim against the estate of a decedent, or against any recipient of the decedent’s property by distribution or survival, an amount equal to the lesser of: [¶] (1) All payments made by the Medi-Cal program on behalf of the decedent; or, [¶] (2) The decedent’s equity interest in the property. [¶] (b) All payments made by the Medi-Cal program on behalf of decedents: [¶] . . . [¶] (2) Age 65 and older, who died on or after July 11, 1994, shall include all payments made from age 65 and older, in addition to any payments made from age 55 to 64 that were paid on or after October 1, 1993; [¶] . . . [¶] (d) The Department shall

not make a claim in any of the following circumstances: [¶] . . . [¶] (2) During the lifetime of a surviving spouse; . . .”

2. On page 5, the third full paragraph beginning at the bottom of the page and continuing to page 6, is modified to read as follows:

The Law Revision Commission Comment to section 366.2 states, “Section 366.2 restates former Section 353(b) without substantive change. This section applies a one-year statute of limitations on all actions *against a decedent* on which the statute of limitations otherwise applicable has not run at the time of death. This one-year limitations period applies regardless of whether the statute otherwise applicable would have expired before or after the one-year period.” (Italics added.) We conclude that on its face, section 366.2 applies to claims that could have been brought against the decedent had he or she lived. Thus, section 366.2 is inapplicable to the present action, brought on a statutory liability that arose only upon the decedent’s death and which could not have been brought against the decedent. (See *Kizer v. Hanna* (1989) 48 Cal.3d 1, 8 [stating that the right to reimbursement under section 14009.5 “arises, if at all, at the time of the recipient’s death and is dependent on conditions existing at such time”].)

There is no change in judgment.

HOLLENHORST

Acting P. J.

We concur:

GAUT

J.

KING

J.